

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

**TERENCE M. KEARNEY,**

Plaintiff,

v.

**ASSET ACCEPTANCE, LLC,**

Defendants.

**MOSMAN, J.,**

No. 3:13-cv-00352-HU

OPINION AND ORDER

On September 17, 2013, Magistrate Judge Hubel issued his Findings and Recommendation (“F&R”) [74] in the above-captioned case, recommending that the claims in Mr. Kearney’s Complaint [1] be dismissed. Mr. Kearney objected [20], and Defendants responded [21].

**DISCUSSION**

The magistrate judge makes only recommendations to the court, to which any party may file written objections. I am not bound by the recommendations of the magistrate judge; instead, I retain responsibility for making the final determination. I am required to review de novo those portions of the report or any specified findings or recommendations within it to which an objection is made. 28 U.S.C. § 636(b)(1). However, I am not required to review, de novo or under any other standard, the factual or legal conclusions of the magistrate judge as to those

portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether objections have been filed, in either case I am free to accept, reject, or modify any part of the F&R. 28 U.S.C. § 636(b)(1).

Upon review, I agree with Judge Hubel's recommendation, and I ADOPT the F&R [74] as my own opinion. Accordingly, Counts I, II, III, and IV of Mr. Kearney's Complaint [1] are DISMISSED WITH PREJUDICE. Counts V, VI, VII, VIII, and IX are DISMISSED WITH PREJUDICE to the extent that they rely on the FTC Act. The remainder of Mr. Kearney's Complaint [1] is DISMISSED WITHOUT PREJUDICE. Mr. Kearney shall have thirty days from entry of this Opinion and Order to file an amended complaint.

IT IS SO ORDERED.

DATED this 8th day of November, 2013.

/s/ Michael W. Mosman  
MICHAEL W. MOSMAN  
United States District Judge